

02-26-02

DAE



ATTORNEY DOCKET NO.
00478.1104

PATENT APPLICATION
09/844,171

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Thomas R. Schimert, et al.	
Serial No.:	09/844,171	
Filing Date:	April 25, 2001	RECEIVED
Group No.:	2878	FEB 27 2003
Examiner:	Timothy J. Moran	OFFICE OF PETITIONS
Notice of Allowance Mailed:	November 19, 2002	
Confirmation No.:	1740	
Title:	INFRARED DETECTOR WITH AMORPHOUS SILICON DETECTOR ELEMENTS, AND A METHOD OF MAKING IT	

BOX DAC

Office of Petitions in the
Office of the Deputy
Commissioner for Patent
Examination Policy
Assistant Commissioner
for Patents
Washington, D.C. 20231

I hereby certify that
the enclosed documents
are being deposited with
the United States Postal
Service "Express Mail
Post Office to
Addressee" service under
37 C.F.R. 1.10 on this
24th day of February,
2003, addressed to
Assistant Commissioner
for Patents, Washington,
D.C. 20231.

Willie Jules

Express Mail Certificate
EV 193177779 US

Dear Sir:

02/27/2003 TTRAN1 00000023 09844171

02.FC:1460

130.00 OP

EV193177779US

PETITION UNDER 37 C.F.R. §1.137(b)

TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION

AND

PETITION UNDER 37 C.F.R. §1.313(c) (2)

FOR WITHDRAWAL FROM ISSUE

The present application became unintentionally
abandoned for failure to timely pay the issue fee. In

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DAL01:722895.1

addition, Applicants have become aware of some documents which are not of record, but which Applicants are obligated to submit pursuant to the duty of disclosure. Due to circumstances which include the fact that a Notice of Allowance has been issued, an information disclosure statement (IDS) for these documents cannot properly be filed under 37 CFR §1.97 at this point in the examination process, and Applicants therefore need to withdraw the present application from issue in order to permit filing of a request for continued examination (RCE) and an IDS. During the three-month period after mailing of the Notice of Allowance, Applicants could have filed an RCE with an IDS, without paying the issue fee. At this point, however, payment of the issue fee is a requirement in order to revive the present application. For example, MPEP §711.03(c)(III)(A)(1) explains that, for purposes of reviving an abandoned application, "the filing of a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned . . . for failure to pay the issue fee".

Accordingly, this Petition addresses two issues. First, this Petition seeks to revive the present application, by submitting the petition fee for unintentionally delayed payment of the issue fee, along with the issue fee. Second, this Petition seeks to have the present application withdrawn from issue, for the purpose of filing an RCE and an IDS. For clarity, these two issues are discussed separately below.

Unintentionally Delayed Payment of Issue Fee

The above-identified patent application became abandoned for failure to timely submit the issue fee in reply to the Notice of Allowance mailed on November 19, 2002. The Notice of Allowance set a three-month period for payment of the issue fee, which expired on February 19, 2003.

With respect to this situation, the provisions of MPEP §711.03(c) specify that

A petition under 37 CFR 1.137(b) requires:

- (A) the required reply, unless previously filed;
- (B) the petition fee as set forth in 37 CFR 1.17(m);
- (C) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and
- (D) any terminal disclaimer required pursuant to 37 CFR 1.137(d).

In the present situation, the required reply is submission of the issue fee. (As noted above, MPEP §711.03(c) requires payment of the issue fee, even though Applicants are also requesting that the present application be withdrawn from issue for the purpose of filing an RCE and an IDS). Accordingly, Applicants are enclosing Issue Fee Transmittal form PTOL-85, along with a check which includes the issue fee of \$1,330.00 (Fee Code 1501).

Applicants are enclosing a further check which includes the required petition fee under 37 C.F.R. §1.17(m) of \$1,300.00 (Fee Code 1453).

It is hereby stated that that the entire delay in filing the required reply, from the February 19, 2003 due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b), was unintentional. MPEP §711.03(c) states that "the Office will generally require only the statement that the entire delay in providing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional", adding that the "Commissioner may require additional information where there is a question whether the delay was unintentional". Accordingly, Applicants are not providing a description of the circumstances surrounding the delay.

The present situation does not involve any need for a terminal disclaimer, and Applicants are therefore not enclosing a terminal disclaimer.

Withdrawal From Issue

Pursuant to the provisions of 37 C.F.R. §1.313(c)(2), it is respectfully requested that, after this application is revived in the manner discussed above, this application be withdrawn from issue for consideration of a Request for Continued Examination (RCE) under 37 C.F.R. §1.114. As discussed above, a Notice of Allowance has been issued, and the issue fee is being submitted with this Petition. Applicants have received some documents which are not of record in the present application, which Applicants are required to submit in order to comply with the duty of

disclosure, and which cannot properly be submitted under 37 CFR §1.97 after payment of the issue fee. Accordingly, this Petition hereby requests that the present application be withdrawn from issue under 37 C.F.R. §1.313(c)(2), in order to permit consideration of an RCE under 37 C.F.R. §1.114. The RCE Transmittal form is enclosed with this Petition. As explained in the accompanying RCE Transmittal, the "submission" provided in association with the RCE is the above-mentioned IDS, which is also enclosed with this Petition. An enclosed check includes the petition fee of \$130.00 (Fee Code 1460) required for this Petition under 37 CFR §§ 1.313 and 1.17(h), and the RCE Transmittal is accompanied by a check for \$750.

Deposit Account Authorization for Excess/Deficiency

Applicants believe that no other fees are due at this time. Nevertheless, the Commissioner is hereby authorized to charge any additional fee required in

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association with this Petition, or to credit any overpayment,
to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
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Date: February 24, 2003

Enclosures: Issue Fee Transmittal (PTOL-85)
RCE Transmittal
Information Disclosure Statement, with enclosures
Checks (\$1,300, \$1,300, \$130, \$750)
Acknowledgment Post Card